

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LATOYIN DAVIS,

Defendant.

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CASE NO. 8:07CR24

ORDER

This matter is before the Court on the Defendant's motion for leave to conduct discovery (Filing No. 51).

The Defendant apparently has served interrogatories on the following individuals: the undersigned; Assistant United States Attorney Thomas Kangior; and defense counsel, Michael Gooch. The Court has also received a "declaration" accompanying copies of the interrogatories, which the Court construed as a motion for leave to conduct discovery.

The rules governing proceedings brought under 28 U.S.C. § 2255 provide:

- (a) Leave of Court Required.** A judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Criminal Procedure or Civil Procedure, or in accordance with the practices and principles of law. If necessary for effective discovery, the judge must appoint an attorney for a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A.
- (b) Requesting Discovery.** A party requesting discovery must provide reasons for the request. The request must also include any proposed interrogatories and requests for admission, and must specify any requested documents.

Rule 6 Governing Section 2255 Proceedings for the United States District Courts ("Rule 6").

In a § 2255 case, a court may authorize discovery in the form of interrogatories. *United States v. Goodman*, 590 F.2d 705, 712 (8th Cir. 1979). Courts have “considerable discretion” in deciding whether to allow discovery in a § 2255 case. 1 RANDY HERTZ & JAMES S. LIEBMAN, *FEDERAL HABEAS CORPUS PRACTICE AND PROCEDURE* § 19.4(a), at 868 (5th ed. 2005); *Dyer v. United States*, 23 F.3d 1421, 1424 (8th Cir. 1994). In a request to conduct discovery, a petitioner must show good cause. In other words, a showing must be made that “specific allegations before the court show that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief.” Rule 6 advisory committee notes (adopting for the § 2255 context the advisory committee notes to Rules Governing Section 2254 Proceedings for United States District Courts (quoting *Harris v. Nelson*, 394 U.S. 286, 301 n.7 (1969))).

The Defendant has not shown good cause to conduct discovery, and the motion is denied.

IT IS ORDERED:

1. The Defendant’s motion for leave to conduct discovery (Filing No. 51) is denied; and
2. The Clerk is directed to mail a copy of this order to the Defendant at his last-known address.

DATED this 13th day of May, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge